THE HONOURABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 23277 of 2007

Date:02-11-2007

Between:

R.V.V.Nageswara Rao

…Petitioner

AND

The Pedamamidipalli Grampanchayat rep. By its Secretary, Pedamamidipalli and another

.. Respondents

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ORDER:

The petitioner questions the notice, dated 26.10.2007 issued by the first respondent-Secretary, Pedamamidipalli Grampancayat, Palakole Mandal, West Godavari District in directing the petitioner to remove the illegal constructions made on the tank bund of the village pond (Pothuraju Cheruvu).

In the said notice it is alleged that the petitioner has occupied the tank bund and constructed a building in R.S.No.59 of Peddamamidipalli village. The said construction of the building is objectionable to the public, and the water in Pothurajucheruvu is being polluted for discharge of water and garbage from the houses affecting the health of the public. In the said notice it is stated that the villagers filed W.P.No.15794 of 2007 and W.P.No.16197 of 2007 on the file of this Court and this Court while disposing of the said writ petitions on 17.08.2007 directed the first respondent to take action and if the land belongs to the government, the Tahsildar has to take action under the provisions of the A.P. Land Encroachment Act and if it vests with the Grampanchayat, the Grampanchayat has to take action under Section 98 of the Panchayat Raj Act (for short 'the Act').

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the first respondent and learned Government Pleader for the second respondent.

The only grievance of the petitioner is that under Section 98 of the Act, it is not open for the first respondent to straightaway pass an order without giving any reasonable opportunity. A perusal of the

Section 98 (1) of the Act goes to show that reasonable opportunity has to be given before taking any action against the encroachers and the constructions made by them. Under Section 98(2) of the Act if the owner or occupier of the building proves that such encroachment or obstruction has existed for a long period and erected with permission or licence of the local authority, then the Grampanchayat shall make a reasonable compensation to every such person who suffer damages by removal or alteration of the same. Thus, the learned counsel for the petitioner submits that he is entitled for reasonable opportunity.

I am not inclined to express any opinion with regard to the merits of the case. This Court while disposing of the said writ petitions filed by R.V.V. Nageshwara Rao, the petitioner in W.P.No.15794 of 2007 and Parim Venkata Subba Rao, the petitioner in W.P.No.16197 of 2007, directed the Gram Panchayat to initiate action, notice has to be issued under Section 98 of the Act. Pursuant to the said order of this Court, a notice has been issued straightaway directing the petitioner to remove the structures.

Having regard to the facts of the case, as no show cause notice has been issued asking the petitioner to remove the structures, I am of the opinion that the impugned notice,

dated 26.10.2007 issued by the first respondent shall be treated as show cause notice permitting the petitioner to file explanation to the said notice within two weeks from today and if any explanation is filed within two weeks from today, the same may be considered and disposed of in accordance with law. Till then, status-quo obtained as on today shall be maintained.

With the aforesaid directions, the writ petition is disposed of. There shall be no order as to costs.

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V.ESWARAIAH, J.

Date:02.11.2007
ccm